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TABLE OF CASES

CONSTITUTIONAL AND STATUTORY AUTHORITIES

MISCELLANEOUS

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 424

JERRY DOUGLAS MEMPA,

Petitioner,

v.

B. J. RHAY, SUPERINTENDENT
WASHINGTON STATE PENITENTIARY,

Respondent.

No. 734

WILLIAM EARL WALKLING,

Petitioner,

v.

B. J. RHAY, SUPERINTENDENT
WASHINGTON STATE PENITENTIARY,

Respondent.

BRIEF OF THE STATE OF FLORIDA, AS AMICUS CURIAE, JOINED AND SUPPORTED BY THE STATE OF IDAHO

INTEREST OF THE AMICI

The petitioners for certiorari in the above cases raised the question of whether a probationer is entitled to have counsel appointed in his behalf at a revocation of probation hearing.

The interest of the Attorney General of the State of Florida in this question is substantial. As chief legal officer of the State of Florida, the Attorney General is concerned with maintaining a fair balance between effective law enforcement to protect society against crime and the observance of procedural due process in the administration of criminal justice. As counsel to the officers of this state, the Attorney General is concerned with the seriously disruptive effects upon the administration of the probation system which would inevitably flow from equating the revocation hearing with a criminal prosecution and extending to it the same procedural safeguards.

Mindful of the precedence that these cases may establish with regard to probation hearings, the State of Idaho joins the State of Florida in presenting their position in this brief amici curiae filed with the court pursuant to Rule 42.

QUESTION PRESENTED

Since this brief is not filed in support of either affirmance or reversal of any of the cases to which it relates, the question is stated in general terms, rather than in the factual framework of any of the cases:

Whether due process of law demands that counsel be appointed indigent probationers in state revocation of probation hearings.

SUMMARY OF ARGUMENT

I

We oppose the extension of new constitutional restrictions to revocation of probation hearings. Neither the literal text nor

the originally intended meaning of the "assistance of counsel" clause of the Sixth Amendment comprehend the same procedural safeguards in post trial disposition of criminals as those of the trial itself. In the few decisions on the subject, this court, the majority of the lower federal courts, as well as the several state courts, have held that the procedure to be employed in revocation of probation hearings is derived specifically from statutes which authorize them and not from any provisions of the state or federal constitutions. There are varied differences in the state court decisions explained by the differences found in the various statutes. The majority, however, follow the language used by this court in cases decided under the federal probation statute. Since probationers have been adjudged guilty of committing certain acts against society and afforded all the safeguards during their particular trials, their subsequent disposition within the community, rather than prison confinement, represents a privilege bestowed upon them by the court.

Such disposition represents a widely recognized practice in rehabilitating unhardened offenders and making them useful members of society. The nature of probation revocation hearings is not such as to require an indigent probationer to fend for himself. The probationer is simply given an opportunity to explain away the accusation that he has broken a condition of his probation. For this purpose most of the jurisdictions, federal and state, afford the probationer an appearance before the court which granted him probation.

Procedural development in this area should take into account the underlying purposes of the probation system and the wide discretion given the courts and probation officials in the effective administration of the system. State courts and administrative agencies are currently and closely concerned with the problems

connected with the probation system and recognize that effective rehabilitation of convicted offenders includes an application of fair standards not inconsistent with the overall purposes of the system.

ARGUMENT

Failure to appoint counsel for indigent probationers at revocation hearings does not violate due process of law.

Prior to passage of the federal Probation Act in 1925 (43 Stat. 1259), the federal district courts had no power at all to suspend sentences and release convicts on probation. *Ex Parte United States*, 242 U.S. 27 (1916). This situation was remedied by Congress when it passed the Probation Act. *Affronti v. United States*, 350 U.S. 79 (1955). Accordingly, cases decided by this court under the federal act have indicated that probationers derive their rights from the act itself rather than the constitution. *Roberts v. United States*, 320 U.S. 264 (1943); *Escoe v. Zerbst*, 295 U.S. 490 (1935); *Burns v. United States*, 287 U.S. 216 (1932). The *Escoe* case, supra, established that under the federal statute a probationer was entitled to an appearance before the court as a prerequisite to commitment for probation violation. The court went further to say that:

> "In thus holding we do not accept the petitioner's contention that the privilege has a basis in the constitution, apart from any statute. Probation or suspension of sentence comes as an act of grace to one convicted of a crime, and may be coupled with such conditions in respect of its duration as Congress may impose." *Escoe v. Zerbst*, supra, at 492, 493.

Both federal and state court decisions have employed reasoning similar to that used in *Escoe v. Zerbst*, supra.[1] The rationale of the courts has been that probationers are convicted criminals. They have been granted probation as a matter of grace and after trials wherein they were afforded all the safeguards due them through the Fourteenth Amendment to the United States Constitution.

A. ELEMENTS OF THE CONSTITUTIONAL ISSUE

The extent to which provisions of the Bill of Rights are incorporated in and made applicable to the states by the Fourteenth Amendment remains a matter of dispute within the court.[2] In our approach to the issues of these cases we assume, arguendo, that in constitutional terms the right to counsel is the same under the Sixth and Fourteenth Amendments.

In a number of recent cases, this court has extended the right to counsel to areas heretofore not recognized as falling within the due process clause of the Fourteenth Amendment. The right to have counsel appointed for indigent felony defendants at the time of trial was settled by *Gideon v. Wainwright*, 372

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[1] See e.g., Brown v. Warden, 351 F. 2d 564 (7 Cir. 1965), cert. denied, 382 U.S. 1028 (1966); Welsh v. United States, 348 F. 2d 885 (6 Cir. 1965); Jones v. Rivers, 338 F. 2d 862 (4 Cir. 1964); Thomas v. United States, 327 F. 2d 795 (10 Cir. 1964), cert. denied, 377 U.S. 1000 (1964); Hyser v. Reed, 318 F. 2d 225 (D.C. Cir. 1963); Yates v. United States, 308 F. 2d 737 (10 Cir. 1962); United States v. Lane, 284 F. 2d 935 (9 Cir. 1960); United States v. Kenton, 262 F. Supp. 205 (D. Conn. 1967); State v. Johnson, 403 P. 2d 938 (Ariz. App. 1965); Gehl v. People, 423 P. 2d 332 (Colo. 1967); Franklin v. State, 392 P. 2d 552 (Idaho 1964); People v. Wood, 139 N.W. 2d 895 (Mich. App. 1966); Harris v. Langlois, 202 A. 2d 288 (R.I. 1964)

[2] See the concurring opinion of Mr. Justice Harlan in Ker v. California, 374 U.S. 23, 44, 45 (1963), and his dissenting opinion in Griswald v. Connecticut, 381 U.S. 479, 500 (1965)

U.S. 335 (1963). This right was extended to the interrogation stage by *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694 (1966). *Re Gault*, ...U.S....., 18 L. Ed. 2d 527 (1967), extended the right to counsel to juvenile proceedings wherein delinquency is determined and commitment may result.

It must be stressed that revocation of probation hearings are not the same type of proceedings dealt with in *Gideon*, *Miranda*, and *Re Gault*, all supra. These cases concerned defendants who were charged with violating the law; where the machinery of state government was primarily concerned in the apprehension and disposition of law violators. The basis of these decisions seems to be that the right to counsel is essential to a fair trial before an impartial tribunal in which every defendant stands equal before the law. Probationers at revocation hearings are not being tried, however. They have already been tried and found guilty of violating the law. Since a revocation of probation hearing is a post-trial proceeding, its inquiry is simply directed toward determining whether or not the probationer has violated the conditions of the probation. *Brown v. Warden*, supra, Note 1. Thus, our concern should be: Whether the procedures employed in revocation of probation hearings are so unfair that probationers are deprived of due process of law.

B. HISTORICAL FACTORS AND ESTABLISHED PRACTICE

The probation system as treatment for convicted offenders has been described as America's distinctive contribution to progressive penology. Newman, *Sourcebook on Probation, Parole, and Pardons*, 68-69 (1958). The system had its beginning around 1841 in Massachusetts, but it wasn't until 1878 that probation was first regulated by statute and 1956 that systems

existed in all the states. Dressler, *Practice and Theory of Probation and Parole*, 18-21 (1959). The federal system got its start in 1925 (43 Stat. 1259).

The procedures used in revoking probation vary according to the jurisdictions. This variance has come about since the statutes in the area of revocation hearings do not elaborate on the scope of the hearings but deal instead with the broader question of whether or not hearings are required (see Appendix A, infra). As a result, the revoking authority has assumed the responsibility of determining what the statutes have demanded. Louis B. Sharp, Chief, Probation Division, Administrative Office of the United States Courts, has outlined hearings and procedures used in the federal courts:

> ". . . the probation officer ordinarily testifies at the hearing and a written report is submitted to the court. The report is not shown to the probationer. Witnesses against the probationer usually do not appear in court, even if the facts are disputed. If witnesses are produced by the probation authorities, the probationer may not cross-examine them as of right, but 'may with permission of the court.' He may not present evidence or witnesses 'as a general rule.' Retained counsel is not permitted at the hearing. Counsel will not be assigned. Notice of charges is 'generally' given 'at the time of arrest' and 'prior to the hearing.' Sklar, *Law and Practice in Probation and Parole Revocation Hearings*, 55 Jour. of Crim. Law, Criminology, and Police Science, 175, 192 (1964). (Hereinafter cited *Sklar*.)

More than half the state statutes expressly provide for a revocation hearing or employ language from which a hearing can be inferred. Others expressly provide that the hearing may be "summary" or "informal." (Appendix A, infra.) The

probation officer can usually arrest the probationer when there is reasonable belief that he has violated the conditions of probation. The defendant is usually given notice of the alleged violations and then brought before the court to give his side of the story. The probation officer is often the sole witness against the probationer. In most cases, the probationer admits the probation violation and witnesses against him generally are not produced. *Sklar*, supra, 192, 193.

The informality of revocation hearings outlined above has received wide recognition from the courts as being essential to the effective administration of the probation system. Such informality does not imply deprivation of due process of law. In speaking of parole revocation hearings, where the procedure is similar to that used in revocation of probation, the court in *Jones v. Rivers*, supra, Note 1, at 874, states:

> "Due process of law varies widely with circumstances. It is one thing in a prosecution for crime, it is another in administering the parole system. The board of parole must obey applicable legislation but otherwise it is only required to perform its functions fairly, under fair procedures."

The court in the *Jones* case, supra, relied heavily on *Hyser v. Reed*, supra, Note 1, where it was said at 237:

> "The Bureau of Prisons and the Parole Board operate from the basic premise that prisoners placed in their custody are to be rehabilitated and restored to useful lives as soon as in the Board's judgment that transition can be safely made. This is plainly what Congress intends. Thus there is a genuine identity of interest if not purpose in the prisoner's desire to be released and the Board's policy to grant release as soon as possible. Here there is not the attitude of

adverse, conflicting objectives as between the parolee and the Board inherent between prosecution and defense in a criminal case."

The language of the federal Probation Act has given the courts no reason to hold differently in probation proceedings. Section 3653 of Title 18, United States Code, simply requires that "as speedily as possible after arrest the probationer shall be taken before the court for the district having jurisdiction over him." The latest change in probation legislation [18 U.S.C. Rules of Criminal Procedure 32(f)] provides that the court shall not revoke probation except after a hearing at which the defendant shall be present and appraised of the grounds on which such action is proposed. It is important to note what this rule does not include as well as the changes it brought. It would appear that the net result has been to codify the decision of *Escoe v. Zerbst*, supra, in which this court construed 48 Stat. 256 (now 18 U.S.C., Section 3653), to require that an informal hearing be held with the probationer present before probation is revoked. Nothing is prescribed as to how the hearing should be conducted, but the court in *Escoe* noted at 295 U.S. 493 that:

> "Clearly the end and aim of an appearance before the court must be to enable an accused probationer to explain away the accusation. . . . This does not mean that he may insist upon a trial in any strict or formal sense. . . . It does mean that there shall be an inquiry so fitted in its range to the needs of the occasion as to justify the conclusion that discretion has not been abused by the failure of the inquisitor to carry the probe deeper."

Three years prior to *Escoe*, supra, the court in *Burns v. United States*, supra, had made it clear that in the case of revo-

cation of probation the question simply was whether the court had properly exercised its discretion. This decision has led one court to state:

> "Since revocation of probation lies within the sound discretion of the sentencing court, United States v. Taylor, 321 F. 2d 339 (4 Cir. 1963), the only question before us is whether the District Court abused its discretion." *United States v. Ball*, 358 F. 2d 367, 369 (4 Cir. 1966)

It was held specifically in *Welsh v. United States*, supra, Note 1, that the constitutional right to the assistance of counsel in the defense of a criminal prosecution, given by the Sixth Amendment, does not apply to a hearing on a motion to revoke probation. See cases cited in Note 1, supra.

C. MATERIALS OF DECISION

We have stressed the nature of the probation system, not because it provides all the answers to the issues raised in these cases, but because it reveals a process and suggests an approach. As the petitioner Mempa (No. 424) suggests, the constitutional right to the assistance of counsel has grown with the years and the times. Although the issue of appointing counsel for indigent probationers at revocation of probation hearings has never been decided by this court, it would appear that since the court is not bound by history or verbal logic, it could extend the constitutional right to counsel to such proceedings. The overwhelming majority of the state and federal courts, however, have failed to do so because of the nature of the proceedings and fear of upsetting the purpose for which the probation system was designed to accomplish. See cases cited in Note 1, supra. Such an approach is not a departure from well recognized principles

of due process of law. We agree, as has been pointed out by this court, that due process is the primary and indispensable foundation of independent freedom. *Re Gault*, supra. But due process does not operate in a vacuum. To say that it requires the appointment of counsel for indigent defendants during the pre-trial and trial stages of a criminal prosecution does not necessarily mean that such should be the case in revocation of probation hearings. It appears that due process requires the appointment of counsel in only those proceedings in which the accused would be at a serious disadvantage through lack of counsel or that, for want of counsel, an ingredient of unfairness would operate actively in the process that results in his confinement. *Gideon v. Wainwright*, supra.

Certainly the sensibilities and peculiarities of a probationer argue the advisability of being careful not only to treat him fairly, but in such a manner that he will see the fairness of it. This does not argue, however, that it is necessary to go to absurd lengths in the treatment of such defendants at the expense of the probation system. The Utah Supreme Court has stated the problem in the following terms:

> "Some practical middle ground should be found between two extremes: On the one hand of compelling a defendant on probation to live in fear that for some trivial reason, or without reason, he may be ordered committed upon someone's whim or caprice; and on the other hand, the ham-stringing of the court so that it cannot with reasonable facility commit a defendant if he deems it proper to do so. Either extreme is undesirable: The first because of its inherent injustice and that it does not correlate with the fundamental objective of probation: rehabilitation. The second because it is so impractical that courts will refuse to place a subject on probation if it is too difficult to com-

mit him if the probation proves unsuccessful." *Baine v. Beckstead*, 347 P. 2d 554, 559 (Utah 1959).

It is submitted that present revocation of probation procedure, as outlined by the various statutes, represents a practical middle ground not inconsistent with due process of law. In the best interests of the defendant and that of society as well, the courts upon a plea of guilty or after conviction are authorized to place a defendant on probation. See, e.g., 18 U.S.C., Section 3651; F.S. 948.01. A probationer is not free but released under conditions prescribed by the court. *Escoe v. Zerbst*, supra. He is made aware that if he disregards the conditions of his probation, he may be imprisoned therefor. Thus, the analogy of extending the prison walls to incorporate probationers seems to have some merit. See *Curtis v. Bennett*, 131 N.W. 2d 1 (Iowa 1964); Benjamin, *Due Process and Revocation of Conditional Liberty*, 12 Wayne L. Rev. 638 (1966).

Supervision of the probationer is usually provided by a state probation or parole agency. The officers of the agency play important roles in revocation proceedings. If, in the belief of the probation officer, a probationer has violated conditions of probation, the officer may arrest the probationer, notify the court of such arrest and cause the probationer to be brought before it. (Appendix A, infra.) Investigations are made and written reports are submitted to the court in the vast majority of jurisdictions. *Sklar*, supra. Notice of the alleged violations is generally given the probationer on or soon after his arrest.

Probation officers are well trained and are fully aware of the objectives of the probation system. They know that maltreatment of probationers has no place in the theory of rehabilitation. It should be remembered that in exercising their discretion, pro-

bation officers use conscientious judgment and do not act arbitrarily.

The ultimate decision to revoke or continue probation, however, is placed in the court after the facts have been presented to it. (Appendix A, infra.) In performing this duty, the courts are afforded wide discretionary powers. As recognized by this court in *Burns v. United States*, supra, at 222:

> "The question, then, in the case of the revocation of probation, is not one of formal procedure either with respect to notice or specification of charges or a trial upon charges. The question is simply whether there has been an abuse of discretion and is to be determined in accordance with familiar principles governing the exercise of judicial discretion."

It is realized that a person on probation may be imprisoned if his probation is revoked. It is equally realized that a probationer could have been imprisoned following conviction rather than being placed on probation. The imprisonment which follows revocation does not result from the revocation but from the original conviction. *Roberts v. United States*, supra; *Brown v. Warden*, supra, Note 1. This fact does not argue against judicial fairness in revocation hearings. It does point out one thing, however: Probationers are convicted criminals under the supervision of the court and probation authorities. Consequently, just as prison officials must have effective control and authority in order to maintain an effective prison program, probation officials must have the same degree of control and authority over probation programing and administration. Given these circumstances, we think the procedures outlined above comply with judicial fairness and are not inconsistent with due process of law.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that due process of law does not require the appointment of counsel for indigent probationers at revocation hearings.

Respectfully submitted,

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APPENDIX A

CLASSIFICATION OF PROBATION STATUTES

I

Statutes Expressly Authorizing Revocation Without a Hearing

State	*Statutes*	*Comments*
Iowa	Iowa Code Ann. Sec. 247.26 (1966)	Probation may be revoked "without notice" to probationer.
Missouri	Mo. Ann. Stats. Sec. 549.101 (1963 Supp.)	Court "may in its discretion with or without a hearing" order the probation revoked.
Oklahoma	Okla. Stats. Ann. tit. 22, Sec. 992 (1961)	Probationer arrested and "delivered forthwith" to the place to which originally sentenced.

II

Statutes Which Do Not Indicate Whether a Hearing Is or Is Not Required

Arizona	Ariz. Rev. Stats. Sec. 13-1657(B) (1957)	The court may "in its discretion," issue a warrant for the rearrest of probation violator and may thereupon revoke and terminate probation.
Arkansas	Ark. Stats. Ann. Sec. 43-2324 (1964 Replacement)	Court may "at any time during the period of suspension revoke the same and order execution of the full sentence."
California	Cal. Penal Code Secs. 1203.2, 1203.3 (1963 Supp.)	Any peace officer may arrest probationer and "bring him before the court," or the court may in its discretion arrest and thereupon revoke probation.

State	*Statutes*	*Comments*
District of Columbia	D.C. Code Sec. 24-104 (1961)	Court may revoke the order of probation and cause the rearrest of the probationer.
Massachusetts	Mass. Ann. Laws Ch. 279 Sec. 3 (1956)	Probation officer may arrest probationer and "take him before" the court.
Nebraska	Neb. Rev. Stats. Sec. 29-2219(3) (1964 Reissue)	Court may issue warrant for the arrest of probationer and impose any penalty which it might have originally imposed.
South Dakota	S.D. Code Sec. 34-3708-2 (1960)	Court may revoke the suspension of sentence at any time during probationary period and impose and execute sentence.
Utah	Utah Code Ann. Sec. 77-62-37 (1953)	Person in charge of probationer shall report probation violation to the court and make such recommendations as are expedient in the case.

III

Statutes Which Imply That a Hearing Is to Be Held

Alaska	Alaska Stats. Sec. 33.05.070(b) (1966)	"As speedily as possible after arrest, the probationer shall be taken before the court . . ."
Nevada	Nev. Rev. Stats. Sec. 176.330 (1965)	The court shall cause the defendant to be brought before it, and may continue or revoke the probation.
Pennsylvania	Pa. Stats. Ann. tit. 19, Sec. 1084 (1964)	Probationer shall be arrested and brought before the court which released him.
Rhode Island	R.I. Gen. Laws Secs. 12-19-9, 12-19-14 (1966 Supp.)	Attorney General shall cause the defendant to appear before the court. Probation may be revoked in open court, in defendant's presence and upon facts from police or probation officer.

State	*Statutes*	*Comments*
Virginia	Va. Code Sec. 53-275 (1967 Replacement)	Court may, "for any cause deemed by it sufficient" cause the defendant to be arrested and brought before it.
Washington	Wash. Rev. Code Sec. 9.95.220 (1965 Supp.)	The court may in its discretion without notice revoke and terminate probation.
Wisconsin	Wis. Stats. Ann. Secs. 57.03, 57.04(2) (1965)	Probation department may order probationer brought before the court.
Wyoming	Wyo. Stats. Sec. 7-321 (1959)	As soon as practicable after arrest the court shall cause the defendant to be brought before it.
Kentucky	Ky. Rev. Stats. Sec. 439.300(1) (1963)	Probation officer shall present written report to the court showing nature of violation. The court shall cause the defendant to be brought before it.
Mississippi	Miss. Code Ann. Sec. 4004-25 (1966 Supp.)	Court shall cause the defendant to be brought before it after submission of probation officer's report of violations.

IV

Statutes Which Expressly Require a Hearing

Alabama	Ala. Code tit. 42, Sec. 24 (1958)	Probation officer shall submit in writing the nature of violation. The court, after a hearing, may revoke probation.
Colorado	Colo. Rev. Stats. Ann. Sec. 39-16-9 (1963)	Probation officer shall conduct investigation of alleged violation and submit report to court which after hearing may revoke probation.

State	*Statutes*	*Comments*
Connecticut	Conn. Gen. Stats. Ann. Sec. 54-114 (1958)	Probationer given notice of alleged violations. Officer submits report to court which may revoke probation after hearing.
Illinois	Ill. Ann. Stats. Ch. 38; Sec. 117-3 (1965)	The court shall conduct a hearing on the issue of the probation violation.
Indiana	Ind. Stats. Ann. Sec. 9-2211 (1956)	Probation officer may arrest probationer. "Thereupon, the probationer shall forthwith be taken before the court for hearing."
Maryland	Charter & Public Local Laws of Baltimore City Sec. 279 (Flack 1947)	The revocation of probation in Maryland is primarily handled on a local level. Hearings are generally required.
Maine	Me. Rev. Stats. tit. 44, Sec. 1633 (1964)	State Probation and Parole Board reports violation to court which after hearing may revoke probation.
New York	N.Y. Code Crim. Proc. Sec. 935 (1958)	After an opportunity to be heard the court may revoke, continue or modify probation.
North Dakota	N.D. Cent. Code Secs. 12-53-11, 12-53-15 (1967 Supp.)	Probationer shall be brought before the court for a hearing upon the alleged violation.
Ohio	Ohio Rev. Code Ann. Secs. 2951.08, 2951.09 (1964)	Probation officer may arrest probationer and bring him before the judge or magistrate before whom the cause was pending.
South Carolina	S.C. Code Secs. 55-595, 55-596 (1962)	Probation officer must submit a report showing manner of violations. After hearing court may revoke probation.
Texas	Texas Code Crim. Proc. Art. 781d, Sec. 8 (1962 Supp.)	

V

Statutes Which Expressly Provide That Hearing May Be "Summary" or "Informal"

State	*Statutes*	*Comments*
Delaware	Del. Code Ann. tit. 11, Sec. 4335(c) (1966)	Process issued for probationer's arrest whereupon "the court shall cause the probationer brought before it without unnecessary delay, for a hearing . . . The hearing may be informal or summary."
Idaho	Idaho Code Sec. 20-222 (1947)	Court after "summary hearing," may revoke probation.
Kansas	Kan. Stats. Ann. Sec. 62-2244 (1964)	The court shall cause the defendant to be brought before it for a hearing which may be informal or summary.
Louisiana	La. Rev. Stats. 15-534(c) (1962 Supp.)	The court shall cause the defendant to be brought before it without unnecessary delay for a hearing. The hearing may be informal or summary.
Montana	Mont. Code Sec. 94-9831 (1967 Supp.)	
New Hampshire	N.H. Rev. Stats. Ann. Sec. 504:4 (1955)	The court, after summary hearing, may make such orders as justice requires.
New Jersey	N.J. Stats. Ann. Sec. 2A:168-4 (1953)	The court, after summary hearing, may continue or revoke probation.
Oregon	Ore. Rev. Stats. Sec. 137.550(2) (1965)	If in judgment of probation officer probationer has violated probation, he may be arrested and brought before the court which, after summary hearing, may revoke probation.

State	*Statutes*	*Comments*
Vermont	Vt. Stats. Ann. tit. 28, Sec. 1015 (1958)	When probation officer believes probationer has violated probation, he shall bring him before the court which may inquire summarily into conduct of probationer.
West Virginia	W.Va. Code Sec. 62-12-10 (1965)	If there is reasonable cause, probation officer may arrest probationer and bring him before the court for a summary hearing.

VI

Statutes Which Expressly Guarantee Certain Elements of a Fair Hearing

Florida	Fla. Stats. Ann. Sec. 948.06 (1965)	Upon reasonable ground any parole or probation supervisor may arrest probationer without a warrant. Probationer granted hearing before court and opportunity to be heard in person or by counsel.
Georgia	Ga. Code Ann. Sec. 27-2713 (1966 Supp.)	Probation officer may arrest probationer without warrant and return him to the court where he will be given an opportunity to be heard in person or by counsel.
Hawaii	Hawaii Rev. Laws Secs. 258-53, 258-56 (1955)	Court having jurisdiction may demand defendant to show cause why sentence should not be imposed and executed.
Michigan	Mich. Stats. Ann. Sec. 28-1134 (1954)	"Summary and informal" hearing, with "a written copy of the charges" given to the probationer prior to the hearing.
Minnesota	Minn. Stats. Ann. Sec. 609.14 (1965)	If grounds for revocation are brought in issue by the defendant, a summary hearing shall be held

State	*Statutes*	*Comments*
		thereon at which probationer is entitled to be heard and to be represented by counsel.
New Mexico	N.M. Stats. Ann. Sec. 40A-29-20 (1963)	Alleged violations read to probationer who may admit or deny same; if he denies them, he is to be "furnished a copy of the petition" to revoke and a hearing is set.
North Carolina	N.C. Gen. Stats. Secs. 15-200, 15-201 (1965)	Probationer informed of the intended revocation and, at his request, the court "shall grant a reasonable time for the defendant to prepare his defense."
Tennessee	Tenn. Code Sec. 40-2907 (1966 Supp.)	Defendant must be present and shall be entitled to be represented by counsel and shall have the right to introduce testimony in his behalf.